

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PLAN FOR RANDOM SELECTION OF JURORS

I.

PREAMBLE

Pursuant to the Jury Selection and Service Act of 1968, as amended, and the Jury System Improvements Act of 1978, 28 U.S.C. Section 1061 et seq., (the Act) the following Plan for the Random Selection of Jurors is adopted by this Court superseding the Plan now in effect, subject to approval of this Plan by a reviewing panel of members of the Fourth Judicial Circuit Council and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

II.

DECLARATION OF POLICY

It is the policy of this Court that all litigants in this court entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community of the Middle District of North Carolina; and that all citizens shall have the opportunity to be considered for service on grand and petit juries, and shall have an obligation to serve as jurors when summoned for that purpose.

III.

DISCRIMINATION PROHIBITED

No citizen shall be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin, or economic status.

IV.

MANAGEMENT AND SUPERVISION OF THE JURY SELECTION PROCESS

The Clerk of Court shall manage the jury selection process under the supervision and control of the Chief U.S. District Judge for the Middle District of North Carolina.

V.

VOTER REGISTRATION LISTS AS SOURCE OF NAMES

The Clerk shall compile and maintain a master list of randomly selected residents of the twenty-four counties comprising this district from which prospective jurors are to be chosen. The master list shall be a list of individuals compiled from the following two source lists:

- persons who are registered to vote in one of the counties within the district;
- persons over the age of eighteen on the first day of January in the year in which the Master Jury Wheel is refilled, and who hold a valid motor vehicle operator's or chauffeur's license, and live in one of the counties within the district as determined from the drivers' license lists provided by the North Carolina Division of Motor Vehicles.

The Clerk shall compile the master list by combining all the names from each source used and eliminating all duplicates. The list of registered voters shall be the primary list and the duplicate names shall be eliminated from the list of licensed drivers. The master list so compiled shall be used for a period of four years.

The Court finds that the persons whose names appear on the source lists in the twenty-four counties comprising this district (on and after January 1, 2000) represent a fair cross section of the community. The procedures prescribed in this Plan to be followed in selecting names from source lists are designed:

- to ensure the random selection of a fair cross section of the persons residing in the community of this district;
- to ensure that each county in the district is substantially proportionately represented in the Master Jury Wheel.

A. Random Selection from Source Lists.

1.) The "random" selection of names from the voter registration and licensed driver lists shall be made by choosing a starting name by a purely random method; and selecting each subsequent name systematically at regular intervals throughout the source list(s) as hereinafter described. This procedure ensures that: (a) names chosen will represent all segments of the source list or file from which drawn, (b) the mathematical odds of individual names being picked are substantially equalized, and (c) the possibility of human discretion or choice affecting the selection of any individual's name is eliminated; or,

2.) At the Clerk's option, and after consultation with the Court, the selection of names from complete source list databases in electronic media for the Master Jury Wheel may be accomplished by a purely randomized process through routines approved by the National Institute of Standards and Technology (NIST). Similarly, at the option of the Clerk and after consultation with the Court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master wheel for the purpose of determining qualification for jury service, and from the Qualified Wheel for summoning persons to serve as grand or petit jurors. Such random selections of names from the source lists for inclusion in the Master Wheel by data computer personnel must insure that each county within the jury selection division is substantially proportionally represented in the Master Jury Wheel in accordance with 28 U.S.C. §§ 1863(b)(3). The selection of names from the source lists, the Master Wheel, and the Qualified Wheel must also insure that the mathematical odds of any single name being picked are substantially equal.

- The term "voter registration list(s)" as used herein shall mean the official records of persons registered to vote in the most recent national general election, established and maintained by county boards of elections in compliance with Chapter 163 of the General Statutes of North Carolina and any rules and regulations promulgated pursuant thereto by the North Carolina State Board of Elections.
- The term "drivers' license list(s)" as used herein shall mean the official records of persons living in any one of the twenty-four counties of this district who hold a valid motor vehicle operator's or chauffeur's license as determined from the drivers' license lists provided by the North Carolina Division of Motor Vehicles.

D. The selection of names shall be made by the Clerk, or made under his direction or supervision. The Clerk is authorized to use personnel of county boards of elections and of the state North Carolina Division of Motor Vehicles and to use automated data processing equipment to make the name selections in compliance with the Act and this Plan.

VI.

MASTER JURY WHEEL

A. General Requirements.

(1) The Clerk shall establish and maintain, or cause to be maintained, one Master Jury Wheel for this District, as defined in section 1869(g) of the Act. The Master Jury Wheel shall contain the names of those persons selected at random for prospective jury duty. The physical form of records on which names for the Master Jury Wheel are kept may include automated data storage devices.

(2) The minimum number of names to be placed in the Master Jury Wheel shall be at least one half of one per centum of the total number of persons on the source lists in all the counties within the District. The Court may direct that additional names be placed in the Master Jury Wheel at any time. Any such additional names shall be selected at random from source lists in compliance with the Act and this Plan.

(3) Commencing in January of 2000, and every fourth year, thereafter, the Master Jury Wheel shall be emptied and refilled in the manner set forth in this Plan.

(4) To ensure the random selection of a fair cross section of the persons residing within the district whose names are to be placed in the Master Jury Wheel, the names appearing on the source lists shall be considered in alphabetical order of their appearance on the source lists or in numerical order of their appearance on the source lists, if they are found to have been numbered in a random manner.

(5) If precinct lists of registered voters are used as a source of names, they shall be considered in numerical order (if the precincts are designated by number in a given county) or in alphabetical order (if the precincts are designated by name) and the total considered to be a countywide list of registered voters.

B. Selection of Names.

(1) The Court shall determine the total number of names to be selected at random from source lists and placed in the Master Jury Wheel. The Clerk shall select, or cause to be selected as provided herein, the number of names from source lists to be placed in the Master Jury Wheel which will give each county substantially the proportionate representation in the Master Jury Wheel that its total number of registered voters and licensed drivers bears to the total number of registered voters and licensed drivers in the district. The selection may be made either manually or through the use of automated data processing equipment or a combination of both methods.

(2) To secure proportionate, or substantially proportionate, representation in the Master Jury Wheel, the total number of registered voters in the district, as reflected in the latest statistical report published by the North Carolina State Board of Elections and total number of licensed drivers in the records of North Carolina Division of Motor Vehicle, shall be divided into the total number of registered voters and licensed drivers in each county within the district. The resulting percentages of the total shall determine the number of names from each county to be placed in the Master Jury Wheel for the district.

(3) When the number of names needed from the source list of each county has been determined, a ratio number or quotient shall be determined and used to ensure a random, objective and fairly distributed selection of names from each county. The ratio number shall be determined by dividing the total number of registered voters and licensed drivers in the district by the number fixed by the Court to be placed in the Master Jury Wheel. For example, if 10,000 names are to be placed in the Master Jury Wheel and there are 920,000 names on all county source lists, the ratio number or quotient would be $920,000 \div 10,000$ or 92. Therefore, every 92nd name on the source lists would be selected. If the ratio number selected, for example, is 92, there shall be placed 92 numbers in a container. The Clerk shall publicly draw one of those numbers. The number drawn shall be known as the starting number. If, for example, the starting number drawn is 15 and ratio number is 92, the first name to be placed in the Master Jury Wheel from each county shall be the 15th name appearing on a given county source list; the second name shall be the 107th name; the

third shall be the 199th name, and so on throughout the source list of that county.

(4) When selection from a county list of registered voters is made manually, the choosing of names shall be by counting names on the list, either in a numerical, alphabetical, or other logical consistent sequence. For such counting and selecting process the entire list shall be covered and the specific names selected according to the established ratio number or quotient and starting number formula described above.

(5) Numbers shall be assigned to the names selected from each county source list. The numerical lists from all counties within the District shall be combined to form one numbered district list of names known as the Master Jury Wheel.

C. Completion of Juror Qualification Form.

(1) When directed by the Court, the Clerk shall draw, or cause to be drawn, at random from the Master Jury Wheel the names of as many persons as may be required for identification of qualified jurors for jury service for a particular period. An alphabetical list of the names drawn shall be prepared, which list shall not be disclosed to any person except pursuant to this Plan and sections 1867 and 1960 of Title 28 U. S. Code. The selection of names and the preparation of alphabetized lists may be done by automated data processing equipment. The Clerk shall mail, or cause to be mailed, to every person whose name is drawn from the Master Jury Wheel a juror qualification questionnaire, accompanied by instructions to fill out and return the form, duly signed and sworn, to the Clerk, by mail, within ten (10) days. The questionnaire form shall be Form AO-178, as it now exists or as hereafter amended, or such other form as is hereafter prescribed pursuant to section 1869(h) of the Act. If a person is unable to fill out the juror qualification questionnaire, another shall do it for him and shall indicate that he has done so and the reason therefor.

In any case in which it appears that there is an omission, ambiguity or error in form, the Clerk shall return the form with instructions to the person to make such additions or corrections as may be necessary and return the form to the Clerk within ten (10) days.

(2) Any person who fails to return a completed juror qualification form as instructed may be summoned by the Clerk forthwith to appear before the Clerk and fill out a juror qualification form. Any person who returns an executed juror qualification form by mail, and who is subsequently summoned for service on grand or petit juries, may be required by the Clerk to fill out an updated juror qualification form in the presence of the Clerk. Any person who fails to appear as directed, or who appears to have willfully misrepresented a material fact on a juror qualification form for the purpose of avoiding service as a juror, may be ordered by the Court to appear and show good cause, if he can, for his failure to appear or his apparent misrepresentation on the juror form.

(3) Returned questionnaires shall be examined to determine qualifications for jury service. Only objective criteria may be used to determine, solely on the basis of information provided on the juror qualification form and other competent evidence, whether a person is unqualified for, or exempt, or to be excused from jury service.

(4) Questionnaires indicating that the prospective jurors are disqualified, or are excused, exempt or excluded as by law provided, shall be so marked and filed separately. All other questionnaires shall be placed on file, and the names of these prospective jurors shall constitute the Qualified Jury Wheel.

VII.

QUALIFIED JURY WHEEL

A. Qualified Jurors.

The Clerk shall maintain, or cause to be maintained, a Qualified Jury Wheel, as defined in section 1869(g) of the Act, for the District and shall place, or cause to be placed, in such wheel the names of all persons drawn from the Master Jury Wheel, who are determined to be qualified as jurors and are not exempt or excused pursuant to this Plan.

B. Drawing of Jurors' Names From Qualified Jury Wheel.

After reasonable public notice in compliance with 28 U.S.C. §§ 1866 and 1869(k) and regulations of the Judicial Conference of the United States, the Clerk shall cause to be drawn at random, the names of enough qualified jurors to meet the needs of this Court and the Bankruptcy Court for grand juries and petit juries. Summonses will be prepared and issued in the order the names were randomly drawn. The drawing of names and preparation of summonses may be done by utilizing automated data processing equipment. The names of persons shall be listed separately for grand jury and petit jury panels.

C. Service of Summonses.

Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his usual residence or business address. Unless otherwise directed by the Court, summonses shall be served by the Clerk or his duly designated deputies, using forms approved and provided by the Administrative Office of the U. S. Courts.

The issuance and service of a summons for the first day of a period of service requires the juror's continued attendance as directed by a judge of the Court, or by the Clerk on behalf of the Court, until the juror is excused.

VIII.

JURY SERVICE

A. Exemption from Jury Service.

The Court finds that exemption of the following groups of persons or occupational classes is in the public interest and would not be inconsistent with sections 1861 and 1862 of the Act; therefore, members of such groups are barred from jury service on the ground that they are exempt:

(1) persons in active service in the Armed Forces of the United States;

(2) members of fire or police and sheriff's departments of the State of North Carolina, or any political subdivision thereof; and

(3) public officers in the executive, legislative, or judicial branches of the Government of the United States, or the State of North Carolina, or any political subdivision thereof, who are actively engaged in the performance of official duties.

B. Determination of Qualifications, Excuses and Exemptions.

(1) Whether a person is unqualified for, or exempt, or to be excused from jury service shall be determined solely on the basis of information provided on the juror qualification form and other competent evidence. Potential jurors who indicate they have been convicted of a felony and that their civil rights have been restored will be requested to furnish the Clerk of Court a copy of the

Restoration of Citizenship certificate, filed pursuant to N.C.Gen.Stat. §§ 13-2 with the Clerk of the General Court of Justice in the county in which the potential juror was convicted or resides, evidencing the restoration of citizenship. The Clerk shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the Master Jury Wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(2) In making such determination, any person shall be deemed qualified to serve on grand and petit juries in the district unless he --

(a) is not a citizen of the United States, eighteen years old, who has resided for a period of one year within this judicial district;

(b) is unable to read, write and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(c) is unable to speak the English language;

(d) is incapable, by reason of mental or physical infirmity to render satisfactory jury service; or

(e) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

C. Basis for Excuses or Exclusions.

Any person summoned for jury service may be:

(1) excused as the Court, or clerk of court acting under the supervision of the Court, may direct from service or attendance for prospective jury service, upon a showing of undue hardship or extreme inconvenience (as defined in subsection B), or upon individual request based upon service as a volunteer safety person, or the fact that the prospective juror is over the age of 70 years, for such period as the Court deems necessary, at the conclusion of which such person shall be summoned again, unless the person be over the age of 70 years, for jury service: provided that if the circumstances causing undue hardship or extreme inconvenience to the prospective juror may be reasonably expected to continue for an indefinite period, the prospective juror may be excused until all other jurors in the Qualified Jury Wheel have been summoned;

(2) excused as the Court, or the clerk of court acting under the supervision of the Court, may direct from service or attendance for prospective jury service, except when necessary to complete service in a particular case, upon a showing of prior attendance or service in federal court (within a period of two years next preceding the date for which summoned) of

(a) more than 30 days as a petit juror,

(b) service on more than one grand jury, or

(c) service as both a grand and petit juror;

(3) excluded by the Court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings;

(4) excluded upon peremptory challenge as provided by law;

(5) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;

(6) excluded upon determination by the Court that his service as a juror would be likely to threaten the secrecy of the proceedings; or otherwise adversely affect the integrity of jury deliberations; or

(7) excluded upon a determination by the Court that such person is not qualified for jury service on one or more of the grounds set out in section 1865 of the Act.

Whenever a person summoned for jury service is found to be disqualified, exempt, or is excused or excluded from jury service, the Clerk shall note the specific reason therefor in the space provided on his juror qualification form unless the reason is stated in the Court's jury selection and service files or is included in the trial record.

D. Disclosing Identity of Jurors.

(1) The names of prospective jurors drawn from the Qualified Jury Wheel or summoned for any session of court, or for a specific case, shall not be disclosed prior to their reporting for duty except in compliance with instructions of the Court.

(2) The Clerk shall make available to counsel for the parties, or to any party appearing pro se, or the press, a jury list which sets forth the name, general address and occupation of each juror summoned and reporting, after court is opened for the session or case for which the jurors were summoned.

(3) After a trial is complete and the service of the jurors who served at that trial is terminated, the Clerk may, upon receipt of a written request, provide the names, addresses and telephone numbers to representatives of the media or to counsel for any party to the case.

(4) Upon receipt of a written request to form and consult with a focus jury, the Clerk may provide to counsel in a pending case the names and addresses of jurors who previously served on either a civil or criminal jury. Counsel who contact such jurors must inform them that participation in a focus jury is voluntary.

E. Assignment to Panels.

When the names of jurors have been drawn at random from the Qualified Jury Wheel and summoned to report on a particular date, or otherwise notified to report on a series of dates, the Clerk shall assign jurors to panels in the random order in which they were summoned unless otherwise ordered by the Court. The names of jurors who have been temporarily excused shall be freely inserted in subsequent panels to the end that all jurors summoned will serve an equal, or nearly equal amount of time.

The Clerk is authorized to act for the Court, under the supervision and control of a judge of this Court or the Bankruptcy Court, and excuse temporarily any person summoned for jury service, pursuant to section VIII, subsection(A) (1) and (2) of this Plan. "Undue hardship or extreme inconvenience" shall mean great distance, either in miles or travel time, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service. Persons who have served on a grand jury under this Plan shall not be recalled for jury service during the four-year period the existing Master Jury Wheel is in use. Jurors who actually serve on a petit jury may be recalled for jury service as directed by the Chief Judge.

IX.

USE OF AUTOMATED OR ELECTRONIC DATA PROCESSING EQUIPMENT IN JURY ADMINISTRATION

The Court finds that the use of automated or electronic data processing equipment and methods in jury administration can be advantageous in selecting and copying names for the Master Jury Wheel from voter registration and licensed driver lists.

Therefore, a properly programmed automated or electronic data processing system or a combination system employing both manual and machine methods may be used, at the Clerk's option, to:

- (1) select names for the Master Jury Wheel from voter registration and licensed driver lists of any or all counties in the district, provided that the required proportions of names for each county are maintained and that the above-described ratio number or quotient and starting number formula is followed;
- (2) select and copy names from the Master Jury Wheel of persons to whom juror qualification questionnaires are to be sent, address and mail such questionnaires, and perform other related clerical tasks;
- (3) establish and maintain a Qualified Jury Wheel, containing at all times an adequate number of names, from which there shall be drawn the names of jurors required for assignment to panels for service as needed by this Court and the Bankruptcy Court and, at the option of the Clerk, prepare and mail completed juror summons forms to prospective jurors; and
- (4) prepare such papers, records, and statistical analyses and reports as may be required in the administration of the jury system.

In the use of automated or electronic data processing equipment in the performance of any task in the administration of this jury selection and service plan, the data processing system shall be so programmed as to ensure a random selection of the required number of names from the entire source list, employing the starting number and ratio number or quotient formula described herein so that any group of names chosen will represent all segments of the source file from which they are drawn; and the mathematical odds of any individual names being selected are substantially equal. If the names in a Master or Qualified Jury Wheel are arranged by computer in an unbiased, random order using an electronically computed random number generator, selection from such randomized list in the order in which the names appear on that list shall be acceptable as meeting the tests of randomness and representativeness set out above.

X.

GRAND JURIES

The Clerk shall summon from the Qualified Jury Wheel, as and when directed by a judge, a sufficient number of jurors, selected at random, to form a panel of 23 jurors to serve as a grand jury for a term not exceeding 18 months. Two or more grand juries may be summoned to serve simultaneously.

XI.

PLAN APPLICABLE TO BANKRUPTCY COURT JURY USAGE

A. Plan Applicable to Bankruptcy Court.

This plan shall, where applicable, govern jury selection and administration procedures in jury usage in the Bankruptcy Court for the Middle District of North Carolina.

B. Jurors Summoned for Bankruptcy Court.

The Clerk of this Court will summon from the Qualified Jury Wheel jurors needed for service in the Bankruptcy Court for this District. Jurors summoned for attendance and service in this Court may be re-assigned to the Bankruptcy Court for service. Jurors summoned for attendance in the Bankruptcy Court may likewise be re-assigned for service in this Court. The judges of the Bankruptcy Court (or the Clerk of the Bankruptcy Court, if authority has been delegated to him) will use all reasonable efforts in scheduling jury trials, in cooperation with the Clerk of this Court, to avoid unnecessary jury calls

and to ensure efficient and economical jury usage by both courts.

This the 29th day of November, 2000.

N. Carlton Tilley, Jr.

Chief Judge

United States District Court

Frank W. Bullock, Jr.

Judge

United States District Court

William L. Osteen

Judge

United States District Court

James A. Beaty, Jr.

Judge

United States District Court